vogue. The third and last division of the report gives in outline the history of civil procedure in New York. According to the Commissioners' computation twenty-five hundred code amendments and statutes relating to practice, enacted since the organization of the State government, besides hundreds of special, local and temporary acts, represent the tortuous evolution of the present unsatisfactory code. The suggestions thrown out as to the general lines along which reform should be made, indicate an inclination on the part of the Commissioners to revise and expand the present code, rather than create a new one. The proposition, however, to extend the scope of the code so as to include as procedure "whatever requires the attention of a court in enforcing or protecting the rights of citizens" — however remote its application — cannot escape much adverse criticism. The test of inclusion is too indefinite. Simplicity and uniformity of procedure are not associated with a miscellaneous code.

The report has, on the whole, broken the ground well for the work to follow; and for this the Commissioners are deserving of praise. But the report has done little more than this, and the crucial task of revision yet remains. Despite the care which characterizes the present report, it still seems better to put the task of revision on free shoulders; not to add it to the burden of revising the General Statutes, which is already imposed upon the Commissioners.

EXTRADITION PROCEEDINGS — WHAT LAW DETERMINES CRIMINALITY OF ACT? — If the United States demands of Canada the extradition of a fugitive from justice, must it be proved before the Canadian tribunal that the act charged is a crime according to both United States and Canadian law? If not, which law is to be considered? The Extradition Act of Canada, following the usual language of treaties, provides that a prisoner shall be surrendered only upon such evidence of criminality as would, under Canadian law, justify his committal for trial if the crime had been committed in Canada. At first glance it would appear that Canadian law should determine merely this question of the amount of evidence necessary, and that, as the crime, if any, has been committed against the laws of the United States, those laws alone should determine substantively whether or not there has been a crime. And that is the opinion expressed by Armour, J., in *Re Phipps*, 1 Ont. R. 586, 609–610, and by the majority of the court in *In the Matter of John Anderson*, 20 U. C. Q. B. 124. But such treaty or statutory provisions have generally been interpreted as providing that the laws of the surrendering country must be considered, not only on points of evidence, but also on the ultimate question of whether the act alleged constitutes one of the extradition crimes. (See *In re Windsor*, 6 B. & S. 522.) And the weight of Canadian authority is to that effect. *In re Smith*, 4 U. C. P. R. 215; Moore on Extradition, § 429, and cases cited.

The further question, as to whether the act must also be shown to be a crime according to the laws of the demanding country, was raised in the recent case of *In re Murphy*, 22 A. R. 386 (as abstracted in 31 Canada Law Journal, 594), and the Court of Appeals of Ontario was evenly divided in its answer. The language of the Extradition Act seems to be equally susceptible of either interpretation, so that the question is left to be decided on general principles. The opinion expressed by the

two judges, who held that it must be proved that the act alleged was a crime in the United States, seems clearly preferable, though accompanied by the apparently mistaken assertion that it must also be a crime of the same *name* in Canada. The chance that an act which is one of the extradition crimes under the law of the surrendering country, will not be a crime at all in the demanding country, is certainly slight. And if the criminality of the act under the former law is shown, the burden of proof may well be cast on the prisoner to show that it is not a crime according to the law of the demanding country. But if he satisfies that burden of proof, he clearly has shown himself guiltless of crime, and should go free. It is believed that this view is in accord with the weight of authority. *In re Bellencontre*, [1891] 2 Q. B. 122; *Re Phipps*, 1 Ont. R. 586; Moore on Extradition, § 429.

When will Deceit lie on a Broken Promise? — In a recent Missouri case, *Traber* v. *Hicks*, 32 S. W. Rep. 1145, the defendant had contracted with the plaintiff to do a certain thing, without disclosing that a previous contract with a third party prevented performance. The plaintiff brought an action of deceit. The argument that the defendant's wrong was a mere breach of contract was dismissed by the court, and the plaintiff was allowed to recover, on the ground that there was concealment of a material fact, namely, the outstanding agreement with the third party, which it was the defendant's duty to disclose. As the other elements of deceit were present, the case was without doubt rightly decided. It suggests the query as to whether the court would have been willing to go one step further, and hold the defendant liable for deceit if he had not put it out of his power to perform, but had merely intended not to perform, at the time he made the promise.

This question has not often arisen, as generally the simpler remedy is to be obtained in an action of contract. But it becomes material in cases where, for one reason or another, it is either inexpedient or impossible to obtain redress in the latter form of action. What little authority there is on the point is in conflict. The latest treatise on torts contains an assertion to the effect that an action of deceit does not lie for failure to perform a promise, though the promisor never intended to perform, and the promisee has altered his position and suffered damage. 1 Jaggard on Torts, 583. And the view that such an act is not fraudulent has been taken by a few courts. *Fenwick* v. *Grimes*, 5 Cranch C. C. 439; *Banque Franco-Egyptienne* v. *Brown*, 34 Fed. Rep. 162, 192. On the other hand, it is generally held that preconceived design in a buyer not to pay for the goods is such fraud as will vitiate the sale. (See the exhaustive opinion of Doe, J., in *Stewart* v. *Emerson*, 52 N. H. 301.) And in other cases a promise made without intent to perform, merely to induce some act on the part of the promisee, has been held fraudulent. *Dowd* v. *Tucker*, 41 Conn. 197; *Goodwin* v. *Horne*, 60 N. H. 485.

The simple question, apparently, is whether there is any misrepresentation of a present fact. As a promise relates to the future, courts have jumped at the conclusion that there is none. But a promise to do an act in the future certainly carries with it a representation of present intention to perform, just as certainly as the promise in *Traber* v. *Hicks*, included a representation that the promisor had not put it out of his power to perform. And that a representation of present intention is a statement of